

UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF ADMINISTRATIVE LAW JUDGES

The Secretary, United States)
Department of Housing and Urban)
Development, on behalf of Complainant)
██████████,)
)
Charging Party,)
)
v.)
)
Castle Management & Consulting, LLC, and)
Lakeside Village Homeowners Association,)
)
Respondents)
_____)

HUD ALJ Number:
11-F-029-FH-10

INITIAL DECISION AND CONSENT ORDER

I. BACKGROUND

On May 3, 2011, HUD filed a Charge of Discrimination against property manager Castle Management & Consulting, LLC (“Castle Management”) and Lakeside Village Homeowners Association (“the Association”) (collectively “Respondents”) charging that Respondents violated Sections 3604(a)-(d) and 3617 of the Fair Housing Act by discriminating against families with children while failing to meet its housing for older persons exemption, 42 U.S.C. § 3607(b)(2)(C).

Complainant ██████████ purchased a dwelling in Lakeside Village at ██████████, Las Vegas, NV 89145 (“Subject Property”) in or around October 2003. At that time Lakeside Village did not prohibit children. In October 2005 a majority of the members of Respondent Association voted to convert Lakeside Village to a community for persons age 55 and older, thus excluding families with children. The Charge alleges, however, that Respondents did not comply with the statutory and regulatory requirements of the Housing for Older Persons (HOPA) exemption and therefore could not legally discriminate against families with children. Complainant listed the Subject Property for sale in or about February 2007 and received a signed purchase agreement for \$245,000 on or around June 4, 2007. The Charge alleges further that the buyer terminated the purchase agreement after Respondent Castle Management informed him of occupancy restrictions that excluded children under age 18 and persons

younger than age 55 years. In addition, the Charge alleges that unable to sell her home because of Respondents' illegal restrictions against families with children, Complainant rented it to a couple without children who were 55 years or older. In order to comply with Respondents' occupancy policies, Complainant had to turn away at least one prospective renter with a child.

Respondents deny that they violated the Act as alleged in the Charge, but agree to settle the claims in the underlying action by entering into this Initial Decision and Consent Order ("Consent Order") in order to avoid the additional cost and expense of litigation. The entry of this Consent Order shall not be deemed as an admission of fault or liability by Respondents.

II. GENERAL PROVISIONS

A. The parties acknowledge that this Consent Order is a voluntary and full resolution of the disputed complaint. No party has been coerced, intimidated, threatened, or in any way forced to become a party to it. The parties acknowledge that they have read and fully understand the significance of the provisions of this Consent Order and their obligations hereunder.

B. The parties and counsel agree that in the interest of a prompt conclusion of this matter, the execution of this Consent Order may be accomplished by the parties' signatures on separate pages of this Consent Order, with the individual signature pages to be attached to the body of the Consent Order to constitute one document to be filed with the Office of Administrative Law Judges. Signatures of the parties to this Consent Order may be executed by way of facsimile or electronic transmission.

C. The parties agree that the Charging Party shall file with the ALJ a Joint Motion for Entry of an Initial Decision and Consent Order, along with the Initial Decision and Consent Order, after the Consent Order is executed by all parties.

D. This Consent Order is binding upon Respondents, their members, principals, owners, employees, successors, agents, assigns and all others in active concert with them in the operation of Lakeside Village. This Consent Order is a full settlement of all claims by Complainant, in any way related to the allegations set forth in the subject Charge of Discrimination.

E. This Consent Order does not in any way limit or restrict HUD's authority to investigate any other complaints involving Castle Management or the Association made pursuant to the Act, by any other complainants within HUD's jurisdiction.

F. The parties and their counsel agree that if a party to this agreement needs an extension of time in order to satisfy a deadline provided herein, such extension must be obtained in writing by mutual agreement of the parties.

G. Pursuant to 24 C.F.R. § 180.680, the parties understand that this Consent Order shall be a public document.

H. The signature of the parties to this Consent Order constitute a waiver of any right to apply for additional attorney's fees or costs pursuant to 24 C.F.R. § 180.705. Each party is responsible for its own attorney's fees and costs.

III. INDIVIDUAL RELIEF

Within thirty (30) days of the effective date of this Consent Order, Respondents shall pay to [REDACTED] the sum of \$75,000.00 in full settlement of her claims for damages arising out of the allegations presented in the complaint. Such payment shall be by certified check. Respondents shall send a copy of the check to the attention of Alexandria Lippincott and Akila Kannan, Office of General Counsel, Fair Housing Enforcement Division, U.S. Department of Housing and Urban Development, 451 7th St. SW, Room 10270, Washington, DC 20410.

IV. ACTIONS IN THE PUBLIC INTEREST

A. Injunction From Discrimination:

- (a) Respondents shall immediately, upon execution of the Consent Order, cease and desist from holding out Lakeside Village as housing for older persons.
- (b) Respondents shall extinguish the First Amendment to Lakeside Village's Declaration of Covenants, Conditions and Restrictions (CC&Rs), including the Preamble and Art. VIII, Section 8.10 within sixty (60) days of the entry date of this Consent Order. Respondents' extinguishment of the First Amendment to Lakeside Village's CC&Rs shall resurrect Lakeside Village's original CC&Rs which, in Art. VIII, Section 8.1, prohibited discrimination against families with children. Further, within sixty (60) days of the entry date of this Consent Order, Respondents shall remove any other restrictions in Lakeside Village's governing documents that limit the ability of families with children to reside in Lakeside Village.
- (c) Respondents shall not maintain any rules or policies or issue any documents to owners, occupants, potential buyers or renters, or the public that suggest that families with children are unwelcome at Lakeside Village or which otherwise conflict with the spirit and goal of this Consent Order, which is to make housing available to families with children.
- (d) Respondents shall not attempt to qualify Lakeside Village as housing for older persons for the term of this Consent Order.
- (e) Respondents shall remove any signage indicating that Lakeside Village is restricted to persons age 55 or older and/or that excludes families with

children under age 18. In its place, Lakeside Village shall replace such signage, including at the front entrance, with signage stating “families with children are welcome.”

- (f) Within thirty (30) days of the entry of the Consent Order, Respondents shall publish and distribute a Notice of Consent Order Prohibiting Familial Status Discrimination (Notice) and Lakeside Village’s Policy of Non-Discrimination Against Families with Children in the Las Vegas Review Journal and Las Vegas Sun. The Notice shall be published on at least four (4) occasions in the News section, two of which shall include Sundays. Each published Notice shall appear in a space measuring at least one-eighth (1/8) of a page. In addition, the Notice shall be published on the Internet through all websites managed or associated with Lakeside Village and Castle Management. The Notice shall (1) renounce Respondents’ claim to the housing for older persons exemption and specifically state that families with children are welcome; (2) make copies of the Consent Order available upon request; and (3) publicize Lakeside Village’s Policy of Non-Discrimination Against Families with Children. See Appendices A and C.
- (g) Respondents, their agents, employees, successors, members and assigns, and all other persons in active concert or participation with any of them, shall not discriminate because of familial status against any person, in violation of the Fair Housing Act, 42 U.S.C. §§ 3601, *et seq.*
- (h) Respondents, their agents, employees, members, successors, and assigns, and all other persons in active concert or participation with any of them, are enjoined from retaliating against any person because that person has made a complaint, testified, assisted, or participated in any manner in this litigation. Respondents further acknowledge that any subsequent retaliation or discrimination constitutes both a material breach of this Consent Order and a statutory violation of the Act.

B. Non-Discrimination Policy; Notice of Fair Housing Rights and Responsibilities:

- (a) Respondents shall prepare and implement a Non-Discrimination Policy (Policy) regarding the sale and/or rental of dwellings at Lakeside Village that shall be applied equally to all actual and prospective residents, regardless of their familial status. In particular, the Policy shall indicate that Lakeside Village will make available to any prospective resident any dwelling that is available for purchase or rent, regardless of the person’s familial status and will communicate such availability to any prospective resident. Further, Respondents shall not interfere with any resident in the use or enjoyment of his or her residence for families with children. The Policy must clearly state that the property is open to all families with children and that restrictions in the application, sale or rental of units because of familial status (*i.e.*, the presence of children under age 18, or that a person is pregnant) are

impermissible. *See* 42 U.S.C. § 3602(k). The text of the Policy shall be consistent with the form set forth in Appendix A to this Consent Order.

- (b) Within ten (10) days of the date of entry of this Consent Order, Respondents shall take the following additional steps to notify owners, residents and the public of the Non-Discrimination Policy, that Lakeside Village is not housing for older persons as defined by the Act at 42 U.S.C. § 3607(b)(2)(C), and that families with children are welcome to reside in Lakeside Village:
- i. Respondents shall provide a copy of the Notice and Non-Discrimination Policy to all owners and occupants of Lakeside Village. See Appendices A and C.
 - ii. Respondents shall provide the Notice and Policy to all local realtors and real-estate related professionals, including the local Multiple Listing Service. See Appendices A and C.
 - iii. Respondents shall make readily available in their offices to all visitors and homeowners the brochure provided by HUD, entitled “Fair Housing – Equal Opportunity for All.”
 - iv. Respondents shall conspicuously display a Fair Housing poster in all Castle Management office locations and all areas used for Lakeside Village Board meetings, or general membership meeting areas. A poster that comports with 24 C.F.R. Part 110 will satisfy this requirement.

C. Mandatory Education and Training:

- (a) Within thirty (30) days of the entry of this Consent Order, Respondents shall provide a copy of this Consent Order and the Non-Discrimination Policy to each of their principals, agents, employees and Lakeside Village Homeowners Association Board members involved in showing, selling renting or managing any and all dwellings at Lakeside Village, or involved in governing Lakeside Village. Respondents shall secure a signed statement from each owner, principal, agent, employee or other person who acts under their direction acknowledging that he or she has received and read the Consent Order and Non-Discrimination Policy. Within five (5) days after new employees, agents, Association board members or other persons acting under their direction become involved in showing, selling, renting, managing or governing any and all units in Lakeside Village Respondents shall provide a copy of the Consent Order and Non-Discrimination Policy to each such person. Respondents shall secure a signed statement from each agent, employee, board member or other person acting under their direction acknowledging that he or she has received and read the Consent Order and

Non-Discrimination Policy. The signed statement shall be in the form set forth in Appendix B.

- (b) Within sixty (60) days of the effective date of this Consent Order Respondent Castle Management & Consulting, LLC, all principals and office staff at all locations who interact with homeowners and the general public, and all Lakeside Village Homeowners Board members shall attend a minimum of two (2) hours of training pertaining to their obligations under the Fair Housing Act and applicable state and local non-discrimination laws. Training shall occur once each year. The Fair Housing training will be conducted by HUD's Office of Fair Housing and Equal Opportunity or another appropriate state or local agency or organization approved by HUD. If Respondents want to engage a trainer other than HUD, they must obtain written approval of such from the FHEO Regional Director, Region IX (address below) at least thirty (30) days prior to the commencement of the training. All costs of the training shall be borne by Respondents.
- (c) Thirty (30) days in advance of the training, Respondents shall provide to the Regional Director a list of each person required to receive training. Within ten (10) days after the training Respondents shall submit to the Regional Director an attendance list and an explanation of any absences.

V. REPORTING AND RECORD KEEPING

- A. Other Fair Housing Discrimination Complaints: During the term of this Consent Order, Respondents shall notify HUD of any formal complaint filed against them with a local, state, or federal agency regarding equal opportunity or discrimination in housing within ten (10) days of receipt of any such complaint. Respondents shall provide a copy of the complaint with the notification to HUD. Respondents shall also promptly provide HUD with all information it may request concerning any such complaint and its actual or attempted resolution.
- B. Records of Applicants for Purchase or Rent: Respondents shall maintain an Application Log regarding sales and rental of units in Lakeside Village. The Application Log shall note that it is being kept for the purposes of compliance with the Consent Order in HUD v. Castle Management & Consulting, LLC, and Lakeside Village Homeowners Association. The Application Log shall include the applicant's name(s), address, phone number and number and ages of children present in the household. This information shall be provided to HUD twice a year, beginning thirty (30) days from the effective date of this Consent Order. If an applicant declines to provide the requested information, Respondents shall note this refusal in the Log.
- C. Signage and Brochures: Within thirty (30) days of the receipt of the required signage and brochures from HUD, Respondent shall submit photographs showing the fair housing signs and brochures required by this Consent Order, and a written declaration

under penalty of perjury that it has complied with Paragraphs IV.B.b. by displaying Fair Housing posters and brochures in the specified location.

D. Send to: All required notifications and documentations of compliance must be submitted to HUD as follows, unless otherwise indicated:

Chuck Hauptman
Director, Region IX
Office of Fair Housing and Equal Opportunity
U.S. Department of Housing and Urban Development
600 Harrison Street, 3rd Floor
San Francisco, CA 94107-1300

Alexandria Lippincott
Akila Kannan
Trial Attorneys
Office of General Counsel Fair Housing Enforcement Division
U.S. Department of Housing and Urban Development, Room 10270
451 7th St. SW
Washington, DC 20410

VI. COMPLIANCE

A. During the term of this Consent Order, HUD may review compliance with this Consent Order, subject to and in accordance with HUD regulations. As part of such review, HUD may, upon providing advance notice of said inspection, inspect Respondents' property, examine witnesses, and copy pertinent records of Respondents. Respondents agree to provide their full cooperation in any compliance review undertaken by HUD to ensure compliance with this Consent Order.

B. Upon a breach of any provision of this Consent Order, HUD may refer this matter to the Department of Justice to petition the United States Court of Appeals for the Ninth Circuit to enforce the Consent Order and for any other appropriate relief in accordance with 42 U.S.C. § 3612(j).

VII. ADMINISTRATION

A. This Consent Order shall remain in effect for a period of three (3) years from its effective date.

B. This Consent Order is entered pursuant to 42 U.S.C. § 3612(g)(3) and 24 C.F.R. § 180.450. The effective date of the Consent Order shall be the date it becomes final, *i.e.*, upon the expiration of thirty (30) days from the date of its issuance, or affirmance by the Secretary within that time. 42 U.S.C. § 3612(h); 24 C.F.R. § 180.680(b)(2).

C. The signatures of the parties to this Consent Order constitute a waiver of any right to withdraw their consent during the thirty (30) day Secretarial review period, and a waiver of any right to challenge the validity of the Consent Order at any time.

RESPONDENTS:

/S/ 09-17-11

Castle Management & Consulting, LLC Date

/S/ 09-16-11

Lakeside Village Homeowners Association Date

COUNSEL FOR RESPONDENTS:

/S/ 09-19-11

Nicole Guralny Date
Leach Johnson Song and Gruchow
8945 West Russell Rd., Ste. 330
Las Vegas, NV 89148

COMPLAINANT:

/S/ 09-08-11

[REDACTED] Date

COUNSEL FOR THE CHARGING PARTY, UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT:

/S/ 09-19-11

Jeanine M. Worden Date
Associate General Counsel
U.S. Department of Housing and Urban Development
451 7th St. SW
Washington, DC 20410

/S/

09-19-11

Kathleen M. Pennington
Assistant General Counsel
U.S. Department of Housing and Urban Development
451 7th St. SW
Washington, DC 20410

Date

/S/

09-19-11

Alexandria Lippincott
Trial Attorney
U.S. Department of Housing and Urban Development
451 7th St. SW
Washington, DC 20410

Date

/S/

09-19-11

Akila Kannan
Trial Attorney
U.S. Department of Housing and Urban Development
451 7th St. SW
Washington, DC 20410

Date

XIII. ORDER OF THE COURT

The hearing in this matter was scheduled for August 23, 2011. The parties notified the court on August 15, 2011 that settlement discussions were underway. On _____, the parties filed a motion for entry of this Consent Order, incorporating the terms of their agreement. The agreement appears to be in the public interest and all parties have signed it. Accordingly, the terms of the Consent Order are hereby entered.

So Ordered this _____ day of _____, 2011.

Alexander Fernández
Administrative Law Judge

APPENDIX A

Non-Discrimination Policy Lakeside Village Homeowners Association

It is the policy of Lakeside Village Homeowners Association (aka "Brookside") and its property management company to comply with the Fair Housing Act, 42 U.S.C. §§ 3601, *et seq.*, by ensuring that dwelling units are available to all persons without regard to familial status (the presence of children under age 18 years, or being pregnant). Any prior or conflicting policies or statements are void. This policy means that, among other things, Lakeside Village Homeowners Association and Castle Management & Consulting, LLC, and all their owners, principals, agents, employees, and members must not discriminate because of familial status against applicants, renters or owners in any aspect of the rental, purchase or occupancy of dwellings in Lakeside Village. Lakeside makes all dwelling units available to all prospective renters and buyers without regard to familial status and does not interfere with anyone's use or enjoyment of a property in Lakeside Village on the basis of familial status. Lakeside Village Homeowners Association and Castle Management & Consulting, LLC, and their owners, principals, agents, employees and members may not:

- A. Prohibit a family with children from living in Lakeside Village because of the presence of children in the household.
- B. Refuse to sell or rent after the making of a bona fide offer, or refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny a dwelling to any person because of familial status;
- C. Discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of familial status, including but not limited to, applying fines or charging additional rent and/or fees based on the presence of or the number of children in a household;
- D. Make, print, or publish or cause to be made, printed or published any notice, statement, or advertisement with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on familial status, or an intention to make any such preference, limitation, or discrimination;
- E. Intimidate, coerce, threaten or interfere with any person in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other person in the exercise or enjoyment of, any right under the Fair Housing Act.

APPENDIX B

Employee/Agent/Board Member Acknowledgement of Receiving and Reviewing
Consent Order and Non-Discrimination Policy

I acknowledge on _____, I received a copy of the Consent Order entered into in HUD v. Castle Management & Consulting, LLC, et al, 11-F-029-FH-10. I have also received a copy of the Lakeside Village Homeowners Association Non-Discrimination Policy. I have read and understood the Consent Order and the Non-Discrimination Policy.

Signature

Print Name

Indicate Job Title or Board Member

Date

APPENDIX C

Notice of Consent Order Prohibiting Housing Discrimination Because of Familial Status
(the presence of children under age 18, or being pregnant) at Lakeside Village
(aka "Brookside"), Las Vegas, NV

On _____, 2011, Castle Management & Consulting, LLC and Lakeside Village Homeowners Association entered into a Consent Order with the U.S. Department of Housing and Urban Development ("HUD") to resolve the Charge filed by HUD in *HUD v. Castle Management & Consulting*, HUD ALJ No. 11-F-029-FH-10 ("Consent Order"), which involved allegations of familial status discrimination in housing transactions. Familial status is the presence of children under age 18 years in a household, or being pregnant. Castle Management & Consulting and Lakeside Village Homeowners Association have denied HUD's allegations of any wrongdoing.

As part of this Consent Order, Castle Management & Consulting, LLC and Lakeside Village Homeowners Association have agreed to:

Declare that Lakeside Village is not housing for older persons and renounce any claim to the housing for older persons exemption to the Fair Housing Act.

- A. Welcome families with children into Lakeside Village.
- B. Inform families with children and/or pregnant persons who may have experienced discrimination in a housing transaction to file a complaint with the U.S. Department of Housing and Urban Development, 600 Harrison St., 3rd Fl., San Francisco, CA, 94107-1300; 800-347-3739; or www.hud.gov
- C. Inform the public of its right to request a copy of the Initial Decision and Consent Order from Castle Management & Consulting, LLC, at 8859 W. Flamingo Rd., #110-521, Las Vegas, NV 89147, or 702-869-0937.
- D. Publicize Lakeside Village's Policy of Non-Discrimination Against Families with Children. See Appendix A.